George McClain, d/b/a McClain Enterprises *and* Laborers' Local Union No. 120, a/w Laborers' International Union of North America *and* Bricklayers Local #3, a/w International Union of Bricklayers & Allied Craftsmen, District Council, Administrative Unit of Indiana. Cases 25–CA–23355, 25–CA–23533, and 25–CA–23366

November 13, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND HIGGINS

Upon charges filed by Laborers' Local Union No. 120, a/w Laborers' International Union of North America (Laborers) and Bricklayers Local #3, a/w International Union of Bricklayers & Allied Craftsmen, District Council, Administrative Unit of Indiana (Bricklayers) (collectively, the Unions) on July 25 and 28, and October 24, 1994, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on March 24, 1995, against George McClain, d/b/a McClain Enterprises, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On October 9, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On October 11, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 13, 1996, notified the Respondent that unless an answer were received by June 21, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a sole proprietorship, with an office and place of business in Indianapolis, Indiana, has been engaged as a masonry and interior package contractor in the construction industry performing commercial and industrial construction. During the 12-month period ending August 1, 1994, the Respondent, in conducting its business operations, provided services valued in excess of $50,000 for Terstep Co., an enterprise within the State of Indiana. Terstep Co., with a principal office in Fishers, Indiana, and jobsites in various States, including the United Airlines jobsite at the Indianapolis, Indiana airport, is a construction contractor in the construction industry performing commercial and industrial construction. During the 12-month period ending August 1, 1994, Terstep Co., in conducting its business operations, provided goods and performed services valued in excess of $50,000 to customers located in States other than the State of Indiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the Mason Contractors Association of Indianapolis, Inc. (the Mason Association) has been an organization composed of various employers engaged in the construction industry, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Bricklayers. About June 1, 1993, the Mason Association and the Bricklayers entered into a collective-bargaining agreement (the Mason Association Agreement), effective from June 1, 1993, through May 31, 1996. About February 10, 1994, the Respondent entered into a Memorandum of Agreement whereby it agreed to be bound by the terms and conditions of the Mason Association Agreement between the Bricklayers and the Mason Association.

The employees of the Respondent in the classifications and performing the work set forth and described in the Mason Agreement (the Bricklayers unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The Respondent, an employer engaged in the building and construction industry, granted recognition to the Bricklayers as the exclusive collective-bargain-

ing representative of the Bricklayers unit without regard to whether the majority status of the Bricklayers unit had ever been established under the provisions of Section 9(a) of the Act. Such recognition is embodied in the Memorandum of Agreement. From February 10, 1994, to May 31, 1996, based on Section 9(a) of the Act, the Bricklayers has been the limited exclusive collective-bargaining representative of the Bricklayers unit.

About June 1, 1993, the labor relations committee of the Associated General Contractors of Indiana, the Mason Association, and the Laborers' International Union of North America, State of Indiana District Council for and on behalf of the Laborers, entered into a collective-bargaining agreement (Laborers' Working Agreement), effective from June 1, 1993, through May 31, 1996. About March 3, 1994, the Respondent entered into an Acceptance of Working Agreement whereby it agreed to be bound by the terms and conditions of the Laborers' Working Agreement.

The employees of the Respondent in the classifications and performing the work as set forth and described in the Laborers' Working Agreement (Laborers unit) constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act. The Respondent, an employer engaged in the building and construction industry, granted recognition to the Laborers as the exclusive collective-bargaining representative of the Laborers unit without regard to whether the majority status of the Laborers had ever been established under the provisions of Section 9(a) of the Act. Such recognition is embodied in the Laborers' Working Agreement. From March 3, 1994, to May 31, 1996, based on Section 9(a) of the Act, the Laborers has been the limited exclusive collective-bargaining representative of the Laborers unit.

Orally on May 8 and June 1, 1994, and by letter dated June 27, 1994, the Laborers requested that the Respondent furnish it with payroll records showing the Laborers unit employees' work hours from March to June 27, 1994. This information is necessary for and relevant to the Laborers' performance of its duties as the limited exclusive collective-bargaining representative of the Laborers unit. Since about May 8, 1994, the Respondent has failed and refused to furnish the Laborers with this requested information.

Orally on May 8 and June 1, 1994, and by letter dated June 28, 1994, the Bricklayers requested that the Respondent furnish it with the names, social security numbers, addresses, dates of hire, and dates of employment of all employees performing bricklayers unit work and also all bricklayers unit work performed by the Respondent. With the exception of social security numbers,[1] this information is necessary for and relevant to the Bricklayers' performance of its duties as the limited exclusive collective-bargaining representative of the Bricklayers unit. Since about May 8, 1994, the Respondent has failed and refused to furnish the Bricklayers with this requested information.

About August 1, 1994, the Respondent withdrew its recognition of the Bricklayers and the Laborers as the limited exclusive collective-bargaining representatives of the respective units.

Since February 10, 1994, the Respondent has failed to continue in effect all the terms and conditions of the Mason Association Agreement by failing and refusing to make the periodic contributions on behalf of its Bricklayer unit employees required by that agreement. The Respondent engaged in this conduct without the Bricklayers consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining. Since about June 24, 1994, the Respondent has refused to adhere to the Mason Association Agreement.

Since March 3, 1994, the Respondent has failed to continue in effect all the terms and conditions of the Laborers' Working Agreement by failing and refusing to make the periodic contributions on behalf of its Laborers unit employees as required by that agreement. The Respondent engaged in this conduct without the Laborers' consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining. Since about June 24, 1994, the Respondent has refused to adhere to the Laborers' Working Agreement.

About June 21, 1994, the Respondent bypassed the respective Unions and dealt directly with its employees in both units by soliciting the unit employees to enter into individual employment contracts and individual methods of wage and benefits payments.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representatives of its respective Bricklayers unit employees and Laborers unit employees within the meaning of Section 8(d), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action de-

[1] The Board has previously held that social security numbers are not presumptively relevant. Accordingly, in the absence of a showing here of their potential or probable relevance, we will not order the Respondent to produce social security numbers. See *Turner-Brooks of Ohio, Inc.*, 310 NLRB 856 (1993); and *Sea-Jet Trucking Corp.*, 304 NLRB 67 (1991).

signed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to provide the Bricklayers and the Laborers with requested information that is relevant and necessary to their role as the limited exclusive bargaining representative of the respective unit employees, we shall order the Respondent to furnish the Bricklayers and the Laborers the information requested, with the exception of social security numbers.

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by withdrawing its recognition of the Bricklayers and the Laborers on August 1, 1994, we shall order it to recognize those Unions as the limited exclusive collective-bargaining representatives of the respective unit employees pursuant to the terms of their contracts. Finally, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since February 10 and March 3, 1994, respectively, to make contractually required periodic contributions on behalf of its Bricklayers unit and Laborers unit employees and by failing to adhere to the Masons Association Agreement and the Laborers' Working Agreement since June 24, 1994, we shall order the Respondent to honor the terms of those agreements and to make whole its unit employees for its failure to adhere to those agreements, including making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[2]

ORDER

The National Labor Relations Board orders that the Respondent, George McClain, d/b/a McClain Enterprises, Indianapolis, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide the Bricklayers and the Laborers with requested information that is necessary for and relevant to their roles as the limited exclusive collective-bargaining representatives of the Respondent's unit employees. The Bricklayers unit includes:

> All employees of the Respondent in the classifications and performing the work set forth and described in the agreement entered into by the Mason Contractors Association of Indianapolis, Inc. and the Bricklayers Local #3, a/w International Union of Bricklayers & Allied Craftsmen, District Council, Administrative Unit of Indiana, on June 1, 1993, effective from June 1, 1993 through May 31, 1996.

The Laborers unit includes the following employees:

> All employees of the Respondent in the classifications and performing the work as set forth and described in the agreement entered into by the Labor Relations Committee of the Associated General Contractors of Indiana, the Mason Association, and the Laborers' International Union of North America, State of Indiana District Council about June 1, 1993, effective from June 1, 1993, through May 31, 1996.

(b) Withdrawing recognition from the Bricklayers or the Laborers as the limited exclusive collective-bargaining representative of the respective unit employees during the term of the collective-bargaining agreement.

(c) Failing to continue in effect all the terms and conditions of the Mason Association Agreement or the Laborers' Working Agreement and failing or refusing to make the contractually required periodic contributions on behalf of the respective unit employees.

(d) Bypassing the Unions and dealing directly with its unit employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Bricklayers with the names, addresses, dates of hire, and dates of employment of all employees performing bricklayers unit work and also information identifying all bricklayers unit work performed by the Respondent, as requested on June 28, 1994.

(b) Furnish the Laborers with the information requested on June 27, 1994.

(c) Recognize the Laborers and the Bricklayers as the limited exclusive collective-bargaining representatives of the respective unit employees pursuant to the terms of their contracts.

[2] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(d) Honor the terms and conditions of the 1993–1996 Mason Association Agreement, and make the unit employees whole for its failure to do so, including making the contractually required periodic contributions on behalf of its employees in the Bricklayers unit that it has failed to make since February 10, 1994, in the manner set forth in the remedy section of this decision.

(e) Honor the terms and conditions of the 1993–1996 Laborers' Working Agreement, and make the Laborers unit employees whole for its failure to do so, including making the contractually-required periodic contributions on behalf of its employees in the Laborers unit that it has failed to make since March 3, 1994, in the manner set forth in the remedy section of this decision.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facilities in Indianapolis, Indiana, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 25, 1994.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 13, 1996

William B. Gould IV,	Chairman
Margaret A. Browning,	Member
John E. Higgins Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to provide the Laborers' Local Union No. 120, a/w Laborers' International Union of North America or the Bricklayers Local #3, a/w International Union of Bricklayers & Allied Craftsmen, District Council, Administrative Unit of Indiana with requested information that is necessary for and relevant to their role as the limited exclusive collective-bargaining representatives of our respective unit employees. The Bricklayers unit includes:

> All employees of the Employer in the classifications and performing the work set forth and described in the agreement entered into by the Mason Contractors Association of Indianapolis, Inc. and the Bricklayers Local #3, a/w International Union of Bricklayers & Allied Craftsmen, District Council, Administrative Unit of Indiana, on June 1, 1993, effective from June 1, 1993, through May 31, 1996.

The Laborers unit includes the following employees:

> All employees of the Employer in the classifications and performing the work as set forth and described in the agreement entered into by the Labor Relations Committee of the Associated General Contractors of Indiana, the Mason Association,

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

the Laborers' International Union of North America, State of Indiana District Council about June 1, 1993, effective from June 1, 1993, through May 31, 1996.

WE WILL NOT withdraw recognition from the Bricklayers or the Laborers as the limited exclusive collective-bargaining representative of our respective unit employees during the term of the collective-bargaining agreement.

WE WILL NOT fail to continue in effect all the terms and conditions of the Mason Association Agreement or the Laborers' Working Agreement, or fail or refuse to make the contractually required periodic contributions on behalf of the respective unit employees during the terms of their contracts.

WE WILL NOT bypass the Bricklayers or the Laborers and deal directly with our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Bricklayers with the names, addresses, dates of hire, and dates of employment of all employees performing bricklayers unit work and also information identifying all bricklayers unit work performed by us, as requested on June 28, 1994.

WE WILL furnish the Laborers with the information requested on June 27, 1994.

WE WILL recognize the Laborers and the Bricklayers as the limited exclusive collective-bargaining representatives of our respective unit employees pursuant to the terms of their contracts.

WE WILL honor the terms and conditions of the 1993–1996 Mason Association Agreement, and make our unit employees whole for our failure to do so, including making the contractually required periodic contributions on behalf of our employees in the Bricklayers unit that we failed to make since February 10, 1994.

WE WILL honor the terms and conditions of the 1993–1996 Laborers' Working Agreement, and make our Laborers unit employees whole for our failure to do so, including making the contractually required periodic contributions on behalf of our employees in the Laborers unit that we failed to make since March 3, 1994.

GEORGE MCCLAIN, D/B/A MCCLAIN ENTERPRISES